United Nations CAT/C/ROU/CO/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the second periodic report of Romania*

1. The Committee against Torture considered the second periodic report of Romania (CAT/C/ROU/2) at its 1296th and 1299th meetings, held on 23 and 24 April 2015 (see CAT/C/SR.1296 and CAT/C/SR.1299), and adopted the following concluding observations at its 1316th meeting, held on 7 May 2015.

A. Introduction

2. The Committee expresses its appreciation to the State party for having submitted its second periodic report but regrets that the report was submitted with a delay of 18 years, which has hindered cooperation and has limited the Committee's ability to carry out its functions under article 19 of the Convention.

3. The Committee appreciates the quality of its dialogue at this time with the State party's delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the fact that Romania has become a party to the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 2 July 2009;

(b) Optional Protocol to the International Covenant on Civil and Political Rights, on 20 July 1993;

(c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 18 October 2001;

(d) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 10 November 2001;

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

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(e) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 25 August 2003;

(f) 1954 Convention relating to the Status of Stateless Persons, in 2006;

(g) 1961 Convention on the Reduction of Statelessness, in 2006;

(h) Convention on the Rights of Persons with Disabilities, on 31 January 2011;

(i) Rome Statute of the International Criminal Court, on 11 April 2002.

5. The Committee welcomes the State party's revision of its legislation in areas of relevance to the Convention, including its adoption of Law No. 429/2003 on the revision of the Constitution; Law No. 678/2001 on preventing and combating trafficking in human beings, amended by Government Decision No. 299/2003; Law No. 682/2002 on the protection of witnesses; Law No. 39/2003 on preventing and combating organized crime; Law No. 217/2003 on preventing and combating domestic violence; Law No. 211/2004 on certain measures to ensure the protection of victims of crimes; Law No. 272/2004 on the protection and promotion of the rights of the child; Law No. 302/2004 on international judicial cooperation in criminal matters; Law No. 304/2005 ratifying the European Convention on compensation for victims of violent crimes; the new Criminal Code (Law No. 286/2009); the new Civil Code (Law No. 287/2009), which entered into force on 1 October 2011; the new Civil Procedure Code (Law No. 134/2010); and the new Criminal Procedure Code (Law No. 135/2010).

6. The Committee also welcomes the State party's amendment of its policies, programmes and administrative measures to give effect to the Convention, including through:

(a) The establishment, through Government Emergency Ordinance No. 51/2008, of the public legal aid system in civil matters;

(b) The approval, through Government Decision No. 1142/2012, of the National Strategy against Trafficking in Human Beings for 2012–2016, and of the National Action Plan for 2012–2014 for the implementation of the National Strategy and for the establishment of the National Agency for Preventing Trafficking in Human Beings and Monitoring the Assistance Accorded to the Victims of Trafficking in Human Beings (Government Decision No. 1083/2006);

(c) The approval, through Government Decision No. 1156/2012, of the National Strategy on Preventing and Combating Domestic Violence for 2013–2017 and of the operational plan for its implementation;

(d) The adoption of the Strategy for the Development of the Penitentiary System, for the periods 2013–2016 and 2015–2020;

(e) The adoption of the Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority for the period 2012–2020 and of sectoral action plans for its implementation.

C. Principal subjects of concern and recommendations

Fundamental legal safeguards

7. The Committee is concerned that detained persons do not enjoy, in practice, all the fundamental legal safeguards from the very outset of their deprivation of liberty, in particular in police detention and arrest centres. It is also concerned that there is no unified national register on deprivation of liberty (arts. 2, 12, 13 and 16).

The State party should take effective measures to guarantee that all detained persons are afforded, in practice, all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including:

(a) **The right of detainees to be informed about the charges against them and about their rights, both orally and in writing, in a language that they understand;**

(b) **The right of detainees to have prompt access to a lawyer from the very outset of deprivation of liberty and, if necessary, to legal aid, including during the initial interrogation;**

(c) **The right of detainees to have immediate access to an independent medical examination, free of charge;**

(d) **The right of detainees to have a family member or another appropriate person of their own choice notified of their detention.**

The State party should establish a proper system of registration, with a single unified national register of detention that includes factual details about the detention, including the justification for the detention, and transfers, and should ensure that it contains the exact date, time and place of detention from the outset of deprivation of liberty.

Prolonged detention in police detention and arrest centres

8. While noting the reduction in the number of pretrial detainees in 2014 owing to the use of alternative measures, the Committee is concerned about the continued use of pretrial and administrative detention during criminal prosecution in police detention and arrest centres, which can be extended to up to 180 days. It is particularly concerned at the continued and prolonged detention of sentenced prisoners in police detention centres. It is also concerned at overcrowding and at the poor material conditions in police detention facilities (arts. 2 and 11).

The State party should put an end to the practice of prolonged pretrial and administrative detention in police detention and arrest centres and should ensure that their use is clearly regulated and is subject to judicial supervision at all times, which guarantees fundamental legal and procedural safeguards. The State party should consider alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). All sentenced detainees held in police detention facilities should be promptly transferred to prisons under the National Administration of Penitentiaries. The State party should continue to renovate police detention centres with a view to bringing the conditions of detention into line with international standards.

Excessive use of force by law enforcement officials and statements made as a result of torture and ill-treatment

9. The Committee is concerned at reports alleging cases of violence by law enforcement officials, including against minors, at the time of arrest, detention and interrogation, that has amounted to ill-treatment and torture, and is aimed among other things at eliciting confessions, some of which has allegedly resulted in deaths. It is particularly concerned about the treatment at the Ilfov Police Inspectorate of two persons reported to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, corroborated by medical reports, which was of such gravity as to amount to torture. The Committee is also concerned at the low number of prosecutions and convictions in such cases. The Committee is further concerned at reports

that police holding cells contain non-standard items which are not in conformity with regulations and which may allow for ill-treatment and torture (arts. 2, 15 and 16).

The State party should:

(a) **Provide the Committee with information on the number of cases of violence by law enforcement officials that have been investigated, the number of perpetrators who have been prosecuted for acts of torture and ill-treatment and the penalties applied to those found guilty;**

(b) **Carry out prompt, impartial, thorough and effective investigations into all allegations of the use of violence, including torture and ill-treatment, by law enforcement officials, prosecute and punish those responsible and provide information to the Committee on the outcome of investigations into the treatment of the two persons at the Ilfov Police Inspectorate;**

(c) **Establish an independent monitoring and oversight mechanism, through the internal disciplinary procedures of the Ministry of the Interior, in order to avoid the investigation of complaints by peers;**

(d) **Ensure that judges, and more particularly judges for rights and freedoms, are automatically notified of all cases of ill-treatment and torture in police detention facilities, regardless of the visibility of the injuries, and equip all places of deprivation of liberty with video devices for recording interrogations, and ensure that persons who have complained about allegations of torture and ill-treatment are protected from reprisals;**

(e) **Reiterate at the highest political level its commitment to zero tolerance of the use of violence against persons deprived of their liberty, including to elicit confessions;**

(f) **Ensure the removal from police stations of all non-standard items that may allow for ill-treatment and torture.**

Violence against Roma

10. While taking note of the strategy for Roma inclusion and the new legal provisions making racist motivation an aggravating circumstance for all offences under the Criminal Code, the Committee is seriously concerned at:

(a) The persistence of reports of racist hate crimes against Roma;

(b) The vulnerability of Roma suspects who are "administratively conveyed" to police stations, by law enforcement officials, with increased risks of ill-treatment and torture;

(c) The reported excessive use of force by law enforcement officials against Roma, including the death in police custody of 26-year-old Gabriel-Daniel Dumitrache on 4 March 2014. According to reports, the police officer currently being prosecuted has been charged with assault, where racial motivation is only an aggravating circumstance, resulting in involuntary manslaughter under article 195 of the Criminal Code, instead of being charged with torture resulting in death under article 282 (3) of the Criminal Code. The family members of Mr. Dumitrache who identified the body reportedly indicated that it showed signs of severe beating, a broken leg, injuries to the abdomen and burn marks on the chest, which were not consistent with the information provided by the police;

(d) Instances of racist hate speech directed against Roma, and the high incidence of anti-Roma rhetoric and negative stereotypes in public and political discourse, by State and non-State actors (arts. 2, 12, 13, 14, 15 and 16).

The State party should:

(a) **Combat impunity and prevent discriminatory police misconduct by ensuring that all cases of excessive use of force by law enforcement officials against members of the Roma community are promptly and effectively investigated and are prosecuted under the appropriate articles of the Criminal Code, taking into consideration any racist motives, and that those responsible are brought to justice and victims are provided with adequate compensation and with as full a rehabilitation as possible;**

(b) **Stop the targeted practice of "administratively conveying" Roma to police stations;**

(c) **Provide information to the Committee on the outcome of the criminal prosecution related to the death in custody of Gabriel-Daniel Dumitrache;**

(d) **Continue to recruit members of the Roma community to law enforcement agencies and police academies;**

(e) **Unequivocally punish hate crimes and condemn all forms of hate speech, in particular that based on racial and discriminatory motives, monitor its incidence and vigorously implement national anti-discrimination legislation;**

(f) **Train public officials to recognize, report, investigate effectively and sanction crimes committed with a racist motive;**

(g) **Conduct public campaigns to raise the awareness of the local population regarding the need to respect the dignity and human rights of Roma.**

Trafficking in human beings

11. While taking note of the National Strategy against Trafficking in Human Beings for 2012–2016 and of the establishment of the National Agency for Preventing Trafficking in Human Beings and Monitoring the Assistance Accorded to the Victims of Trafficking in Human Beings, the Committee is concerned that the State party remains a country of origin, transit and destination for human trafficking, in particular for sexual and labour exploitation and forced begging (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) **Continue taking measures to prevent and eradicate human trafficking, including by providing specialized training to public officials on identifying victims and on investigating, prosecuting and sanctioning perpetrators;**

(b) **Allocate sufficient funds to combat trafficking and vigorously implement national legislation and continue conducting national prevention campaigns about the criminal nature of such acts;**

(c) **Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down, for human trafficking, and on the provision of effective redress to the victims.**

Situation of asylum seekers and aliens

12. The Committee is concerned that persons in need of international protection do not have the unhindered access to asylum procedures, including refugee status determination, that is required by international standards. It is also concerned at the reportedly unnecessary detention both of asylum seekers who are to be transferred under regulation (EU) No. 604/2013 of the European Parliament and the Council of the European Union and of rejected asylum seekers and other aliens, including those whose removal is pending. It is

further concerned at the absence of a statelessness determination procedure in the State party (arts. 3, 14 and 11).

The State party should:

(a) **Ensure that all persons applying for international protection have access to a fair refugee determination procedure and are effectively protected against refoulement to countries where they risk torture, and consider establishing a statelessness determination procedure;**

(b) **Refrain from detaining asylum seekers and aliens, promote alternatives to detention, and revise its policy in order to bring it into line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention.**

Conditions of detention and treatment in penitentiary facilities

13. The Committee is concerned at the increase in the prison population and at the continued overcrowding in spite of projects for the construction of new prisons. It is also concerned at the poor prison infrastructure and material conditions, including in the Gherla Penitentiary Institution, which was built in 1540, at the persistent understaffing, which gives rise to violence between prisoners and at the shortage of medical staff and absence of psychiatrists in the penitentiary health system. The Committee is particularly concerned at the use of special intervention units in prisons, whose actions are reported to often result in the ill-treatment of inmates. Furthermore, the Committee is concerned that prison doctors are required to certify that prisoners sanctioned with disciplinary procedures are fit to undergo punishment (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) **Enhance the steps to improve material detention conditions in line with the relevant international norms and standards, including by renovating existing prison facilities, closing those unfit for use, speeding up the scheduled building of new prisons and ensuring that living space conforms at least to minimum international standards, and report to the Committee on progress made in implementing the "Modernization through repairs" strategy for the penitentiary system for 2015–2020;**

(b) **Further enhance the measures taken to reduce overcrowding, which include the increased use of alternatives to incarceration, such as probation, bail, mediation, community service and suspended sentences, taking into account the provisions of the Tokyo Rules;**

(c) **Ensure adequate staffing of the penitentiary health system and, in particular, the hiring of psychiatrists and strengthen the monitoring of vulnerable prisoners. In order to maintain the relationship between patients and doctors, prison doctors should not be required to certify that prisoners are fit to undergo disciplinary sanctions;**

(d) **Provide a systematic medical examination of detainees within 24 hours of their arrival in prison, make appropriate treatments available, especially to detainees with tuberculosis or HIV/AIDS, and implement programmes related to the distribution and monitoring of medicines taken, in all penitentiary facilities;**

(e) **Put an end to the permanent presence and use of special intervention units in penitentiary facilities, through improved prison management, by increasing the ratio of staff to prisoners and by training prison staff in communicating with and managing inmates;**

(f) **Ensure that all persons suspected of having committed physical or psychological torture or ill-treatment and wilful negligence are prosecuted and, if found guilty, punished in accordance with the gravity of their acts and provide information to the Committee on the number, type and outcome of such cases;**

(g) **Establish an independent mechanism to deal with inmates' complaints about their conditions of detention and treatment, provide effective follow-up to such complaints for the purpose of remedial action and ensure that inmates who file complaints are not subjected to reprisals;**

(h) **Ensure that the Ombudsman acting as the national preventive mechanism and other independent bodies are able to regularly visit all places of detention and to exercise their functions effectively.**

Situation in psychiatric wards, psychiatric hospitals and specialized psychiatric institutions, for persons with mental disabilities

14. The Committee is gravely concerned at:

(a) The treatment and living conditions of persons with mental disabilities, both adults and minors, in psychiatric wards, psychiatric hospitals and specialized psychiatric institutions, which have reportedly resulted in numerous deaths of patients owing to neglect, lack of basic care, the use of mechanical restraints, the denial of medical and psychological treatment, and severe malnutrition amounting to inhuman and degrading treatment;

(b) The absence of investigations into the reported deaths of 16 patients at Poiana Mare Psychiatric Hospital, of several hundred patients between 2001 and 2004 and of some 2,000 persons between January 2011 and August 2014 in institutions for persons with mental disabilities in approximately half of the country, owing to extremely bad living conditions and inferior medical treatment, such as always being kept in dark rooms and sedated, being tied with ligatures to their beds and fed while lying on their backs, being fed insufficient and inadequate food and being screamed at, beaten and denied life-saving external medical treatment, resulting in serious medical or psychological stress, as was the case with patients at the Gheorghe Serban Centre for Neuropsychiatric Recuperation and Rehabilitation;

(c) The absence of legal capacity of patients and of legal safeguards regarding explicit consent for placement and medical treatment in psychiatric institutions, combined with the absence in files of official decisions on placement, which amount to forced institutionalization and forced medical treatment;

(d) The absence of judicial review in respect of the initial placement and the continued stay of mental health patients in psychiatric institutions, which amounts to unlawful and indefinite detention but is nevertheless designated as "voluntary" by circumventing provisions in the mental health legislation and preventing the right of appeal;

(e) The high numbers of persons with psychosocial disabilities and of mental health institutions, which reflect lack of progress in the transition from institutional care to community-based care and family centres (arts. 2, 11, 12, 13, 15 and 16).

The State party should:

(a) **Amend the legislation in order to provide persons with mental and psychosocial disabilities with the right to legal capacity and to ensure the effective supervision and monitoring by judicial organs of any placement in psychiatric hospitals and institutions of persons with mental and psychosocial disabilities, ensure the patient's right to be heard in person by the judge ordering the hospitalization and**

ensure that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient;

(b) **Ensure that every patient, whether he or she is hospitalized voluntarily or involuntarily, is fully informed about the treatment to be prescribed and is given the opportunity to refuse treatment or any other medical intervention, and ensure that involuntary placements are subject to an automatic periodic review;**

(c) **Ensure effective legal safeguards for persons in such institutions, including the right of effective appeal, establish an independent complaints mechanism and ensure that patients are granted independent legal representation enabling them to have their complaints relating to the living conditions in the institution concerned, their health and their treatment examined before a court or another independent body, and provide redress to victims;**

(d) **Urgently improve the conditions and treatment in psychiatric hospitals and institutions for persons with psychosocial disabilities;**

(e) **Promptly and effectively investigate all cases of death in psychiatric hospitals and institutions, prosecute those responsible for acts of torture, ill-treatment or wilful negligence, punish them with appropriate penalties and provide redress to the victims.**

Secret detention centres and rendition flights

15. The Committee is concerned at persistent allegations of illegal detention of persons in secret detention facilities of the Central Intelligence Agency and of extraordinary rendition flights into and out of Romania in the context of the country's international cooperation in countering terrorism. It is also concerned that, in his application filed in 2012 with the European Court of Human Rights, Abd al-Rahim Hussayn Muhammad Al-Nashiri claimed that he had been illegally detained and tortured in an Agency detention facility in Romania; this is currently being investigated by the Romanian Prosecutor General. The Committee is also concerned at the discrepancy between the information provided by the State party, and the statements made in December 2014 by the former head of the Romanian intelligence service which indicated that the authorities had allowed the Agency to operate detention facilities between 2003 and 2006 where inmates allegedly suffered inhumane treatment (arts. 2, 3, 12 and 16).

The Committee encourages the State party to continue its investigations into the allegations of its involvement in a programme of secret detention centres, and of the use of its airports and airspace by aeroplanes involved in "extraordinary rendition", and to inform the Committee of their outcome. The Committee requests the State party to provide it with information about the outcome of any ongoing investigations regarding the case of Abd al-Rahim Hussayn Muhammad Al-Nashiri.

National preventive mechanism

16. The Committee welcomes the establishment of the national preventive mechanism under the Optional Protocol to the Convention. The Committee is, however, concerned that it is reportedly not functioning as a fully operational national preventive mechanism (art. 2).

The State party should allocate adequate financial and staffing resources to ensure the independence of the office of the Ombudsman, in order to enable it to function effectively in its distinct role as the national preventive mechanism. It should also ensure that the mechanism has a multidisciplinary team that includes persons with medical and psychiatric expertise, and that the mechanism visits regularly all places where persons are deprived of their liberty. The Committee encourages the national

preventive mechanism to take advantage of the experience of civil society organizations in this field.

Juveniles

17. While noting that amendments to the Criminal Code have abolished the penalty of imprisonment for minors, the Committee is concerned that numerous children continue to be held in detention centres with prison-like conditions. It is also concerned that children are often questioned by law enforcement officials in police stations without the presence of their lawyers or legal representatives (art. 2).

The State party should bring the functioning of institutions dealing with minors into compliance with national legislation abolishing the penalty of imprisonment for minors and develop a system of juvenile justice that guarantees international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System. Children questioned by law enforcement officials should be afforded fundamental legal safeguards.

Training

18. While taking note of the training provided to public officials involved in custody transfer and public order, the Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact of such training as regards torture and ill-treatment. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not provided systematically to all officials who document and investigate cases of torture (art. 10).

The State party should:

(a) **Further develop and strengthen training programmes to ensure that all public officials, including law enforcement, prison and immigration officers, as well as judicial staff, are aware of the provisions of the Convention;**

(b) **Systematically provide training on the Istanbul Protocol for medical personnel and other officials involved in documenting and investigating cases of torture;**

(c) **Develop methodologies to assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.**

Redress, including compensation and rehabilitation

19. The Committee takes note that the State party is transposing, into its national legislation, Directive 2012/29/EU of the European Parliament and the Council of Europe establishing minimum standards on the rights, support and protection of victims of crime. Given the magnitude of the acts committed, it is concerned at the slowness of the proceedings and the meagre results so far of the investigations conducted by the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile, which have identified 35 persons who held management positions and are suspected of having committed political crimes during the communist regime and to which there appears to be no follow-up regarding the identification of victims and the provision of redress (art. 14).

The State party should enact legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with full redress, in line with general comment No. 3 (2012) on the implementation of article 14 by States parties.

Data collection

20. The Committee regrets the absence of a unified register containing comprehensive and disaggregated data, including the nationality and ethnicity of victims, on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, and on cases of trafficking and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions, with regard to cases of torture and ill-treatment, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence, as well as on the means of redress, including compensation and rehabilitation, provided to the victims.

Follow-up procedure

21. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations relating to: (a) prolonged detention in police detention and arrest centres; (b) excessive use of force by law enforcement officials; and (c) the national preventive mechanism (see paras. 8, 9 and 16 above).

Other issues

22. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

23. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider communications.

24. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

25. The State party is invited to submit its next report, which will be its third periodic report, by 15 May 2019. For that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.